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HOUSE BILL 291

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

LARRY A. LARRANAGA

AN ACT

RELATING TO MOTOR VEHICLE INSURANCE; ENACTING THE PERSONAL CHOICE AUTO INSURANCE ACT; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 25 of this act may be cited as the "Personal Choice Auto Insurance Act".

Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS--PURPOSES OF ACT. --

A. The legislature finds that under former law, New Mexico motorists were required to purchase liability insurance primarily for the benefit of others. To protect themselves and their family members from other motorists who chose not to comply with the law, motorists had to purchase

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1 additional insurance coverage. Motorists who did not purchase
2 liability insurance required by law were nonetheless permitted
3 to make liability claims against motorists who had purchased
4 liability insurance. That system for compensating injured
5 motorists was inefficient and over compensated persons with
6 non-serious injuries. The costs of compensating injured
7 persons were compounded by extraordinary litigation and claim-
8 processing costs that were ultimately borne by insurance
9 consumers and taxpayers of New Mexico.

10 B. The purposes of the Personal Choice Auto
11 Insurance Act are to:

12 (1) give owners of motor vehicles the option
13 to reduce insurance costs by choosing how they will satisfy
14 the requirements of the Mandatory Financial Responsibility
15 Act. Under the Personal Choice Auto Insurance Act, motorists
16 may choose to:

17 (a) forgo their right to sue for non-
18 economic and compensated economic damages arising out of a
19 motor vehicle accident except in certain circumstances, by
20 purchasing a personal compensation policy; or

21 (b) retain the right to recover for
22 damages under tort principles by rejecting purchase of a
23 personal compensation policy as provided in the Personal
24 Choice Auto Insurance Act;

25 (2) require insurers to make certain optional

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1 coverages available at additional cost to motorists who choose
2 to purchase a personal compensation policy;

3 (3) encourage motorists to comply with
4 Mandatory Financial Responsibility Act requirements by
5 limiting uninsured motorists' rights to recover for loss;

6 (4) speed the administration of justice, ease
7 the burden of litigation on New Mexico courts, decrease the
8 expenses associated with litigation and create a system of
9 arbitration of claims for personal compensation benefits; and

10 (5) correct imbalances and abuses in the
11 operation of the motor vehicle accident insurance system,
12 encourage prompt medical treatment and rehabilitation, provide
13 offsets to avoid duplicate recovery and require medical
14 examinations.

15 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the
16 Personal Choice Auto Insurance Act:

17 A. "accidental bodily injury" means bodily injury,
18 sickness, disease or death arising out of a motor vehicle
19 accident, where the motor vehicle accident is unintended by
20 the injured person;

21 B. "cause of action for injury" means a claim for
22 accidental bodily injury caused by the negligence or
23 intentional misconduct of another person, including a claim by
24 a person other than the injured person based on such injury,
25 including loss of consortium, companionship or another

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1 derivative claim;

2 C. "dependent" means all individuals related to
3 another person by blood, affinity or adoption who reside in
4 the same household with the person and receive financial or
5 services support from the person;

6 D. "driving under the influence of intoxicating
7 liquor or drugs" means an individual has been convicted, as
8 defined in Subsection B of Section 66-5-28 NMSA 1978, of
9 violating Subsection A, B, C or D of Section 66-8-102 NMSA
10 1978;

11 E. "economic loss" means pecuniary loss and
12 monetary expense incurred by or on behalf of an injured person
13 as the result of an accidental bodily injury;

14 F. "injured person" means an individual who
15 sustains accidental bodily injury, or the personal
16 representative of a deceased individual's estate;

17 G. "insurer" means an insurer or qualified self-
18 insurer providing coverage on motor vehicles pursuant to the
19 provisions of the Personal Choice Auto Insurance Act;

20 H. "intentional misconduct" means conduct whereby
21 bodily injury is intentionally caused by a person who acts or
22 fails to act for the purpose of causing bodily injury, or who
23 knows or reasonably should have known that bodily injury is
24 substantially certain to result. A person does not
25 intentionally cause bodily injury;

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1 (1) merely because his act or failure to act
2 is intentional; or

3 (2) if the act or omission causing bodily
4 injury is for the purpose of averting bodily harm to the
5 person so acting or to another;

6 I. "loss of income from work" means:

7 (1) if the injured person was employed or
8 self-employed at any time during the year preceding an
9 accident, eighty percent of the average weekly amount the
10 injured person would have earned, or could have reasonably
11 expected to earn but for the accidental bodily injury, through
12 employment in his usual occupation or profession, reduced by
13 either:

14 (a) eighty percent of the average
15 weekly amount received from substitute employment or self-
16 employment; or

17 (b) the average weekly amount of income
18 the injured person would have earned in available appropriate
19 substitute employment that the person was capable of
20 performing but unreasonably failed to undertake; or

21 (2) if the injured person was unemployed, the
22 amount of unemployment compensation benefits the injured
23 person would have been eligible to receive but for the
24 accidental bodily injury, except that "loss of income from
25 work" does not include any loss of income after an injured

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1 person's death;

2 J. "medical expenses" means reasonable expenses
3 incurred by or on behalf of an injured person for necessary
4 medical, chiropractic, surgical, dental, ambulance, hospital,
5 medical rehabilitation, physical therapy and professional
6 nursing services and drugs, medically necessary equipment
7 designed primarily for a medical purpose, eyeglasses, hearing
8 aids and prosthetic devices, except for those expenses
9 incurred when accidental bodily injury is first discovered and
10 treated more than one year after the date of the accident or
11 any expense incurred more than three years after the date of
12 the accident. "Medical expenses" does not include:

13 (1) any portion of the charge for a room in
14 any hospital, clinic, convalescent or nursing home, extended
15 care facility or any similar facility in excess of the
16 reasonable and customary charge for semi-private
17 accommodations unless otherwise medically necessary;

18 (2) any portion of a charge or fee for any
19 treatments, services, products or procedures that are
20 experimental in nature, for research not primarily designed to
21 serve a medical purpose or not commonly and customarily
22 recognized throughout the medical profession or, in the case
23 of chiropractic care, not commonly and customarily recognized
24 throughout the chiropractic profession in the United States as
25 appropriate for treatment of accidental bodily injury; or

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1 (3) that portion of any charge for services,
2 products or facilities that exceeds the health care provider's
3 reasonable and customary charge for like services, products or
4 facilities;

5 K. "medical rehabilitation" means medically
6 necessary rehabilitation services designed to reduce the
7 disability and dependence of an injured person and to restore
8 the person, to the extent reasonably possible, to his pre-
9 accident level of physical functioning;

10 L. "motor vehicle" means a self-propelled vehicle
11 of a kind required to be registered under New Mexico law for
12 use on public streets and highways, other than a vehicle with
13 three or fewer load-bearing wheels;

14 M "motor vehicle insurance policy" means that
15 term as defined in Section 59A-7-7.1 NMSA 1978;

16 N. "non-economic loss" means any loss other than
17 economic loss, including pain, suffering, loss of enjoyment of
18 life, mental anguish, emotional distress and all other non-
19 economic damages;

20 O. "occupying" means to be in, upon or engaged in
21 the immediate act of entering into or alighting from a motor
22 vehicle;

23 P. "operation, maintenance or use" means
24 operation, maintenance or use of a motor vehicle as a motor
25 vehicle, including occupying the vehicle. "Operation,

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1 maintenance or use" does not include:

2 (1) conduct in the course of the business of
3 repairing, servicing, washing, selling, maintaining or
4 manufacturing motor vehicles unless the conduct occurs off the
5 business premises; or

6 (2) conduct in the course of loading or
7 unloading the motor vehicle unless the conduct occurs while
8 engaged in the operation, maintenance or use of the vehicle;

9 Q. "other person responsible for maintaining
10 insurance coverage" means a person with a statutory or
11 contractual responsibility of maintaining insurance coverage
12 on a motor vehicle, including lessees and employees who are
13 responsible for insuring an employer-furnished vehicle;

14 R. "pedestrian" means a person not occupying a
15 motor vehicle;

16 S. "personal compensation benefits" means benefits
17 with an aggregate limit of at least fifteen thousand dollars
18 (\$15,000) per person per accident for economic loss resulting
19 from accidental bodily injury, as follows:

20 (1) medical expenses;

21 (2) loss of income from work up to two
22 hundred dollars (\$200) per week for not more than three years
23 from the date of the accident that caused the accidental
24 bodily injury;

25 (3) if the injured person is not receiving

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1 benefits for loss of income from work, replacement services
2 loss up to one hundred dollars (\$100) per week for not more
3 than three years from the date of the accident that caused the
4 accidental bodily injury; and

5 (4) a death benefit of fifteen thousand
6 dollars (\$15,000) payable to the dependents or, if none, to
7 the estate of the decedent, if death occurs not more than one
8 year after the date of the accident causing the accidental
9 bodily injury;

10 T. "personal compensation chooser" means a
11 personal compensation insured or a person other than an
12 uninsured motorist who has not exercised his right pursuant to
13 Section 5 of the Personal Choice Auto Insurance Act to reject
14 that act's limitations on tort rights and liabilities;

15 U. "personal compensation insured" means:

16 (1) the named insured of a personal
17 compensation policy or a resident relative, other than a tort
18 chooser;

19 (2) a person, other than a tort chooser, who
20 sustains accidental bodily injury while occupying the motor
21 vehicle described on the declarations page of a personal
22 compensation policy; or

23 (3) with respect to accidents within New
24 Mexico, a pedestrian, other than a tort chooser, who sustains
25 accidental bodily injury through being struck by the motor

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1 vehicle described on the declarations page of a personal
2 compensation policy;

3 V. "personal compensation policy" means an
4 insurance policy or qualified self-insurance plan that
5 provides personal compensation benefits, property damage
6 liability and compulsory financial responsibility coverage
7 applicable in jurisdictions other than New Mexico in at least
8 the minimum limits required by the Personal Choice Auto
9 Insurance Act;

10 W. "property damage liability" means liability
11 insurance coverage with a limit of at least ten thousand
12 dollars (\$10,000) per accident, exclusive of interest and
13 costs, for damage to property in any one accident;

14 X. "replacement services loss" means expenses
15 reasonably incurred for ordinary and necessary services from
16 others in lieu of those the injured person would have
17 performed, not for income but for the benefit of the injured
18 person's family, if he had not been injured. "Replacement
19 services loss" does not include expenses for services
20 performed by any person residing in the household of the
21 injured person, services performed by any person related to
22 the injured person or services performed after the injured
23 person's death;

24 Y. "resident relative" means an individual related
25 to a named insured of a motor vehicle insurance policy by

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1 blood, affinity or adoption and who customarily resides in the
2 same household with the named insured. An individual
3 customarily resides in the same household if the individual
4 primarily makes his home in the same family unit, even though
5 temporarily living elsewhere;

6 Z. "superintendent" means the superintendent of
7 insurance;

8 AA. "tort chooser" means a person who has
9 exercised his right pursuant to Section 5 of the Personal
10 Choice Auto Insurance Act to reject that act's limitations on
11 tort rights and liabilities;

12 BB. "tort coverage" means coverage under a motor
13 vehicle bodily injury and property damage liability policy in
14 which a tort chooser involved in an accident with a personal
15 compensation chooser recovers damages from the tort chooser's
16 own insurer for economic and non-economic loss that the tort
17 chooser is barred from recovering from the personal
18 compensation chooser. The coverage limit shall be at least
19 equal to the bodily injury liability limit under the policy;
20 and

21 CC. "uncompensated economic loss" means that
22 portion of economic loss arising out of accidental bodily
23 injury that exceeds the total of benefits provided by
24 applicable personal compensation policies and benefits
25 received from all other sources as reimbursement for or

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1 arising from accidental bodily injury, other than life
2 insurance benefits, regardless of the nature or number of
3 benefit sources available or their form. "Uncompensated
4 economic loss" does not include:

5 (1) the amount of economic loss resulting
6 from application of a deductible under a personal compensation
7 policy;

8 (2) the amount of economic loss that would
9 have been covered under a personal compensation policy
10 providing minimum benefits that the injured person or his
11 resident relative was required to maintain by the Personal
12 Choice Auto Insurance Act but failed to maintain in effect; or

13 (3) the first fifteen thousand dollars
14 (\$15,000) of economic loss sustained by a tort chooser,
15 regardless of whether such loss is recovered from any other
16 source.

17 Section 4. [NEW MATERIAL] MOTOR VEHICLE INSURANCE
18 REQUIREMENTS. --

19 A. Every owner or other person responsible for
20 maintaining insurance coverage on a motor vehicle, other than
21 those motor vehicles listed as exempt in Section 66-5-207 NMSA
22 1978, shall be covered by a personal compensation policy
23 providing personal compensation benefits, property damage
24 liability and compulsory financial responsibility coverage
25 applicable in jurisdictions other than New Mexico in at least

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1 the minimum limits required by the Personal Choice Auto
2 Insurance Act, unless the owner or other person responsible
3 for maintaining insurance coverage is a tort chooser.

4 B. A tort chooser is not eligible for a personal
5 compensation policy and shall comply with the provisions of
6 the Mandatory Financial Responsibility Act by obtaining a
7 motor vehicle bodily injury and property damage liability
8 policy or providing other evidence of financial
9 responsibility.

10 C. The personal compensation policy required by
11 this section may be provided through insurance or a qualified
12 plan of self-insurance approved by the superintendent. The
13 superintendent may approve a self-insurance plan and issue a
14 certificate of self-insurance if the superintendent is
15 satisfied that the plan is actuarially sound and will continue
16 to have sufficient financial assets to respond to claims.

17 D. The named insured of a personal compensation
18 policy may waive benefits for loss of income from work for an
19 appropriate rate reduction by completing a certification form
20 prescribed by the superintendent stating under oath that
21 neither the named insured or any resident relative has earned
22 income from regular employment during the past thirty days,
23 and that none of them expects to earn income from regular
24 employment for at least one hundred eighty days from the date
25 the certification is executed. A properly completed form

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1 shall be conclusive proof of the insured's intent to waive
2 loss of income benefits.

3 E. Prior to the inception of a personal
4 compensation policy, the insurer shall offer the named insured
5 the additional, optional insurance coverages specified in
6 Subsection F of this section. A named insured's decision to
7 purchase or not to purchase such coverages is binding on all
8 insureds covered by the policy and applies to all renewals and
9 replacement policies until the named insured requests a
10 change.

11 F. The additional optional insurance coverages
12 required to be made available under a personal compensation
13 policy at additional cost are:

14 (1) personal compensation benefits covering
15 loss in excess of fifteen thousand dollars (\$15,000) per
16 person, in optional increments up to not less than an
17 aggregate limit of one hundred thousand dollars (\$100,000) per
18 person per accident. Except as provided in Subsection D of
19 this section, if the aggregate limit is one hundred thousand
20 dollars (\$100,000) or more, the sublimit for loss of income
21 from work shall be not less than five hundred dollars (\$500)
22 per week;

23 (2) motor vehicle bodily injury liability
24 insurance with a limit of not less than fifteen thousand
25 dollars (\$15,000) per person per accident, exclusive of

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1 interest and costs, due to accidental bodily injury and,
2 subject to the per-person limit, an aggregate limit of not
3 less than thirty thousand dollars (\$30,000), exclusive of
4 interest and costs; and

5 (3) scheduled benefits coverage with limits
6 of at least ten thousand dollars (\$10,000) per person per
7 accident, in optional increments up to not less than one
8 hundred thousand dollars (\$100,000) per person per accident.
9 Scheduled benefits coverage shall provide benefits, payable in
10 addition to and without regard to any other benefits payable,
11 for loss from accidental bodily injury sustained by the named
12 insured of a personal compensation policy or a resident
13 relative who is not a tort chooser while engaged in the
14 operation, maintenance or use of a motor vehicle or as a
15 pedestrian. Scheduled benefits coverage shall be paid as
16 follows, provided that only the largest applicable benefit
17 shall be paid for any one person for a single accident:

- 18 (a) loss of life, the principal sum;
19 (b) permanent and total disability, the
20 principal sum;
21 (c) loss of two or more members, the
22 principal sum;
23 (d) loss of one member, one-half of the
24 principal sum;
25 (e) loss of thumb and index finger on

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1 the same hand, one-fourth of the principal sum;

2 (f) permanent and total loss of
3 hearing, one-half of the principal sum;

4 (g) permanent and total loss of the
5 sense of smell or taste, one-fourth of the principal sum;

6 (h) loss of a finger or toe, one-eighth
7 of the principal sum;

8 (i) serious permanent disfigurement,
9 one-eighth of the principal sum; and

10 (j) permanent and total loss of use of
11 an internal organ, one-eighth of the principal sum.

12 G. As used in Paragraph (3) of Subsection F of
13 this section:

14 (1) "loss" means, with regard to a hand or
15 foot, permanent, complete loss of use of the hand or foot, or
16 actual severance of the hand or foot through or above the
17 wrist or ankle joints; with regard to an eye, complete,
18 irrecoverable loss of sight; with regard to a thumb,
19 permanent, complete loss of use of the thumb or actual
20 severance of the thumb through the proximal phalanx or
21 metacarpal; with regard to the index finger or any other
22 finger, permanent, complete loss of use of the particular
23 finger or actual severance of the particular finger through
24 the middle or proximal phalanx or metacarpal; and with regard
25 to any toe, actual severance through the proximal phalanx or

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1 metacarpal of the particular toe;

2 (2) "member" means hand, foot or eye;

3 (3) "permanent and total disability" means,
4 for persons who have reached the age of majority or who are
5 working full time at the time of the accidental bodily injury,
6 the insured's complete inability after one year of continuous
7 total disability to engage in an occupation or employment for
8 which the insured is fitted by reason of education, training
9 or experience for the remainder of the insured's life. As
10 used in this paragraph, "continuous total disability" means
11 the insured's complete inability during the first year of
12 disability to perform every duty of the insured's occupation.
13 Such inability shall commence within thirty days after the
14 date of the accident. For persons who are both under the age
15 of majority and not working full time at the time of the
16 accidental bodily injury, "permanent and total disability"
17 means for two consecutive years having an abnormal
18 electroencephalography and abnormal brain magnetic resonance
19 image or the presence of seizures for two consecutive years;
20 and

21 (4) "principal sum" means the coverage limit
22 for scheduled benefits coverage.

23 H. An insurer may offer:

24 (1) limits higher than those required by this
25 section;

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1 (2) deductible and coinsurance options for
2 the coverage described in Paragraph (1) of Subsection F of
3 this section;

4 (3) a limit on the coverage specified in
5 Paragraph (2) of Subsection F of this section on a combined
6 limit basis instead of a split limits basis; and

7 (4) coverages in addition to those required
8 by this section, including collision and comprehensive
9 physical damage.

10 I. Any coverages provided pursuant to this section
11 shall be subject to the premium rates, policy forms, terms,
12 limitations, conditions and exclusions approved by the
13 superintendent.

14 J. The coverages provided pursuant to this section
15 shall be subject to the provisions of Section 8 and Section 10
16 of the Personal Choice Auto Insurance Act.

17 K. Each insurer shall furnish the first named
18 insured with a card constituting evidence of financial
19 responsibility and proof of insurance, provided that the card
20 shall not be deemed to create insurance coverage if the policy
21 has, in fact, lapsed or been canceled on the date of the
22 accident. The card, insurance policy, insurance policy
23 binder, certificate of insurance or such other proof as may be
24 prescribed by the motor vehicle division of the taxation and
25 revenue department shall constitute sufficient proof of

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1 insurance and evidence of financial responsibility for
2 purposes of New Mexico law.

3 Section 5. [NEW MATERIAL] RIGHT OF REJECTION--UNIFORMITY
4 OF CHOICE. --

5 A. Any person or a resident relative, including a
6 person who is not the owner or other person responsible for
7 maintaining insurance coverage on a motor vehicle, may execute
8 a form prescribed by the superintendent rejecting the
9 limitations on tort rights and liabilities of the Personal
10 Choice Auto Insurance Act and shall file the form with the
11 superintendent, who shall maintain the forms as public
12 records. Rejection is effective with respect to any accident
13 occurring after the date and time the superintendent receives
14 the rejection form. Rejection for a minor or incapacitated
15 person shall be made on his behalf by his parent or guardian
16 and shall remain effective until revoked or until the person
17 is no longer a minor or incapacitated, whichever comes first.
18 Completion and filing of the form prescribed by the
19 superintendent shall be conclusive proof that the person
20 completing the form made an informed and knowledgeable
21 decision concerning rejection. Rejection remains effective
22 until revoked in writing on a form prescribed by the
23 superintendent.

24 B. Each person so rejecting, if he is the owner or
25 other person responsible for maintaining insurance coverage on

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1 a motor vehicle, shall maintain in effect a policy of motor
2 vehicle bodily injury and property damage liability insurance
3 with at least the minimum coverages, including tort coverage,
4 and limits required by the Personal Choice Auto Insurance Act
5 and the Mandatory Financial Responsibility Act.

6 C. A person who effectively rejects in compliance
7 with Subsections A and B of this section retains all tort
8 rights and tort liabilities to the extent provided in the
9 Personal Choice Auto Insurance Act. No such person is
10 entitled to collect personal compensation benefits under any
11 policy unless he has subsequently revoked the rejection as
12 provided in Subsection D of this section.

13 D. Revocation of rejection forms shall be made on
14 a form prescribed by the superintendent. Revocation becomes
15 effective as of the date and time the superintendent receives
16 it. Revocation remains effective until superseded by the
17 filing of a rejection form. Regardless of the nonfiling of
18 subsequent revocation forms, a person eligible for payment of
19 personal compensation benefits as a named insured under a
20 personal compensation policy shall be deemed to have withdrawn
21 any rejection.

22 E. In order to minimize conflict in choices
23 between personal compensation choosers and tort choosers,
24 insurers are authorized to maintain underwriting rules that
25 require uniformity of choice by the named insured and all

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1 resident relatives.

2 F. The superintendent shall adopt and promulgate
3 rules governing:

4 (1) rejection and revocation of such
5 rejection pursuant to this section, including situations
6 involving multiple vehicles and multiple policies in the same
7 household; and

8 (2) a system for maintaining and providing
9 access to forms filed pursuant to this section.

10 Section 6. [NEW MATERIAL] CONSUMER INFORMATION
11 PROGRAM --

12 A. The superintendent shall establish and maintain
13 a program to inform consumers about the comparative costs of a
14 personal compensation policy and a motor vehicle bodily injury
15 and property damage liability policy, including with the
16 latter required minimum uninsured motorist coverage, as well
17 as the benefits, rights and responsibilities under each type
18 of insurance. The program shall include procedures for
19 informing insureds of their right of rejection.

20 B. The superintendent shall prepare a budget
21 reflecting costs associated with carrying out his
22 responsibilities under the Personal Choice Auto Insurance Act.
23 The superintendent's budgeted costs shall be assessed annually
24 to all motor vehicle insurers doing business in New Mexico pro
25 rata on the basis of earned premium reported for the preceding

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1 calendar year.

2 C. Any person, after being provided information in
3 a form approved by the superintendent explaining the basis for
4 choosing between being a personal compensation chooser and a
5 tort chooser, shall be bound to the terms of the status and
6 coverage chosen and is precluded from claiming liability
7 against any other person based on being inadequately informed.

8 Section 7. [NEW MATERIAL] APPLICATION OF PERSONAL
9 COMPENSATION BENEFITS AND COVERAGES TO OTHER JURISDICTIONS. --

10 A. A personal compensation policy shall pay
11 personal compensation benefits for accidental bodily injury of
12 a personal compensation insured sustained within the United
13 States, its territories or possessions or Canada.

14 B. A personal compensation policy shall, if an
15 insured becomes subject to a compulsory financial
16 responsibility or similar law of another jurisdiction of the
17 United States, its territories or possessions or Canada,
18 provide the coverage required by the law of that jurisdiction.

19 Section 8. [NEW MATERIAL] PERSONS NOT ENTITLED TO
20 PERSONAL COMPENSATION BENEFITS-- LIMITATIONS ON PERSONAL
21 COMPENSATION BENEFITS. --

22 A. Notwithstanding any other provision of the
23 Personal Choice Auto Insurance Act, an insurer is not
24 obligated to provide personal compensation benefits for any
25 injured person who:

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1 (1) was injured in a motor vehicle accident
2 while committing a felony or while voluntarily operating or
3 occupying a vehicle known by him to be stolen;

4 (2) was injured while engaged in the
5 operation, maintenance or use of a motor vehicle owned by,
6 furnished to or available for the regular use of the injured
7 person, or a resident relative of the injured person, if such
8 motor vehicle is not covered by the policy against which a
9 claim is made;

10 (3) was injured as a pedestrian by a motor
11 vehicle owned by, furnished to or available for the regular
12 use of the injured person, or a resident relative of the
13 injured person, if the motor vehicle is not covered by the
14 policy against which a claim is made;

15 (4) was injured as a result of his
16 intentional misconduct. If a person dies as a result of his
17 intentional misconduct, the insurer is not obligated to
18 provide the person's dependents and estate his personal
19 compensation benefits;

20 (5) was an uninsured motorist at the time of
21 the accident causing the injuries. As used in this paragraph,
22 "uninsured motorist" means a person who is the owner of or
23 other person responsible for maintaining insurance coverage on
24 a motor vehicle pursuant to the Personal Choice Auto Insurance
25 Act but who has failed to maintain the coverage;

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1 (6) was injured while operating or occupying
2 a motor vehicle involved in an organized race or speed
3 contest; or

4 (7) is a tort chooser.

5 B. There shall be no coverage for the named
6 insured or any resident relative under a personal compensation
7 policy while operating or occupying a self-propelled vehicle
8 with three or fewer load-bearing wheels.

9 C. An insurer shall not be obligated to pay
10 personal compensation benefits, other than medical payments,
11 to or on behalf of any injured person who was driving under
12 the influence of intoxicating liquor or drugs.

13 D. Nothing in this section bars an insurer from
14 providing personal compensation benefits for any injured
15 person, otherwise excluded by this section, if the policy
16 clearly states that it provides the coverage.

17 Section 9. [NEW MATERIAL] PAYMENT OF PERSONAL
18 COMPENSATION BENEFITS. -- Personal compensation benefits are
19 payable to any one of the following:

- 20 A. the injured person;
- 21 B. the parent or guardian of the injured person,
22 if the injured person is a minor or incapacitated;
- 23 C. a dependent or the personal representative of
24 the estate of the injured person; or
- 25 D. any person providing medical or other health

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1 care services, products or facilities for which payment is
2 due.

3 Section 10. [NEW MATERIAL] PRIORITY OF BENEFITS. --

4 A. Personal compensation policies are liable to
5 pay personal compensation benefits in the following order of
6 priority up to their respective coverage limits:

7 (1) the personal compensation policy covering
8 a motor vehicle involved in the accident, if the injured
9 person was engaged in the operation, maintenance or use of the
10 motor vehicle or was a pedestrian injured by the motor vehicle
11 at the time of the accident;

12 (2) any personal compensation policy under
13 which the injured person is a named insured;

14 (3) any personal compensation policy under
15 which the injured person is a resident relative; and

16 (4) any personal compensation policy under
17 which the injured person qualifies as a personal compensation
18 insured other than as described in Paragraphs (1) through (3)
19 of this subsection.

20 B. Subject to the payment priorities in Subsection
21 A of this section, if a personal compensation insured is
22 entitled to benefits under more than one personal compensation
23 policy or coverage, the maximum recovery shall not exceed the
24 amount payable under the personal compensation policy with the
25 highest limit.

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1 C. If two or more insurers are obligated to pay
2 personal compensation benefits at the same priority, the
3 insurer against whom the claim is first made shall pay the
4 claim up to that insurer's policy limits as if wholly
5 responsible and may thereafter recover contribution pro rata
6 on the basis of coverage limits from any other insurer at the
7 same priority level.

8 D. For purposes of payment of personal
9 compensation benefits only, an unoccupied, parked motor
10 vehicle is not a motor vehicle involved in an accident unless
11 it was parked in such a way as to cause unreasonable risk of
12 injury.

13 Section 11. [NEW MATERIAL] COORDINATION OF BENEFITS. --
14 The personal compensation insurer has the primary obligation
15 to indemnify its personal compensation insured who sustains
16 accidental bodily injury; provided that personal compensation
17 benefits are excess over and shall not duplicate the amount of
18 benefits an injured person recovers, or is entitled to
19 recover, under a state or federal workers' compensation law or
20 similar occupational injury law, based on the same accidental
21 bodily injury.

22 Section 12. [NEW MATERIAL] LIMITATIONS ON TORT RIGHTS
23 AND LIABILITIES--CLAIMS FOR UNCOMPENSATED ECONOMIC LOSS. --

24 A. Except as provided otherwise in Subsection C or
25 D of this section:

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1 (1) no person, other than a tort chooser,
2 shall have a cause of action in tort or otherwise for
3 accidental bodily injury caused in whole or in part by the
4 operation, maintenance or use of a motor vehicle subject to
5 the Personal Choice Auto Insurance Act, other than for
6 uncompensated economic loss; and

7 (2) a tort chooser shall have no cause of
8 action in tort or otherwise against a personal compensation
9 chooser for accidental bodily injury caused in whole or in
10 part by the operation, maintenance or use of a motor vehicle
11 subject to the Personal Choice Auto Insurance Act, other than
12 for uncompensated economic loss.

13 B. Subject to the provisions of Subsection A of
14 this section and except as provided otherwise in Subsection C
15 or D of this section, an uninsured motorist shall not have a
16 cause of action to recover damages resulting from an accident
17 arising out of the operation, maintenance or use of a motor
18 vehicle from a personal compensation chooser or a tort chooser
19 for:

20 (1) the first fifteen thousand dollars
21 (\$15,000) of economic loss resulting from accidental bodily
22 injury; or

23 (2) the first ten thousand dollars (\$10,000)
24 of property damage.

25 C. As used in this section, "uninsured motorist"

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1 means a person who is the owner of or other person responsible
2 for maintaining insurance coverage on a motor vehicle subject
3 to the insurance requirements of the Personal Choice Auto
4 Insurance Act, but who fails to maintain the minimum required
5 coverages.

6 D. Any person shall have a cause of action under
7 common law tort principles for economic and non-economic loss
8 against any other person who causes accidental bodily injury
9 or motor vehicle property damage while committing a felony or
10 while driving under the influence of intoxicating liquor or
11 drugs. Insurers are prohibited from paying the damages
12 assessed against an insured pursuant to this subsection,
13 except for economic loss.

14 E. Any person shall have a cause of action under
15 common law tort principles for economic and non-economic loss
16 resulting from accidental bodily injury or property damage
17 caused by intentional misconduct of another person. Insurers
18 are prohibited from paying damages assessed against an insured
19 pursuant to this subsection.

20 F. Nothing in this section is intended to limit
21 any cause of action in tort or otherwise against a person
22 other than an individual who is engaged in the operation,
23 maintenance or use of a vehicle at the time of an accident.

24 Section 13. [NEW MATERIAL] CLAIMS FOR UNCOMPENSATED
25 ECONOMIC LOSS--SETTLEMENT PERIOD--ATTORNEY FEES.--

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1 A. Any claimant seeking recovery for uncompensated
2 economic loss from another person, as authorized by the
3 Personal Choice Auto Insurance Act, shall make demand for
4 settlement in writing, accompanied by supporting documentation
5 and all relevant bills and employer records, to the person or
6 the person's insurer at least thirty days before filing any
7 lawsuit seeking damages against the person. The person
8 against whom the claim is made or his insurer shall reply in
9 writing to the demand prior to the last day of the settlement
10 period, or the person shall be deemed to have made no offer.
11 If any applicable statute of limitation would otherwise run
12 during the thirty-day settlement period, that statute of
13 limitation shall be tolled until the end of the second
14 business day after the last day of the settlement period. The
15 thirty-day settlement period shall begin to run on the day the
16 written demand is mailed or otherwise delivered.

17 B. If the claimant is unable to reach an agreement
18 with the person against whom the claim is made or the person's
19 insurer by the last day of the settlement period, the claimant
20 shall be entitled to file a lawsuit seeking uncompensated
21 economic loss based on common law tort principles. If the
22 claimant is deemed the prevailing party in the lawsuit as
23 provided in this subsection, he shall, in addition to any
24 damages awarded, be awarded reasonable attorney fees, not to
25 exceed one-third of the gross amount of the recovery,

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1 exclusive of interest and court costs; provided that if the
2 gross recovery exceeds one hundred thousand dollars
3 (\$100,000), the maximum fee shall be limited to one-third of
4 the amount up to one hundred thousand dollars (\$100,000) plus
5 fifteen percent of the amount in excess of one hundred
6 thousand dollars (\$100,000). The claimant shall be deemed to
7 be the prevailing party if he is awarded damages, exclusive of
8 interest and court costs, in an amount equal to or greater
9 than the midpoint between the last written demand made during
10 the settlement period by the claimant and the last written
11 offer made during the settlement period by the person against
12 whom the claim is made or the person's insurer.

13 C. Nothing in this section shall be deemed to
14 prohibit the parties from compromising a claim at any time by
15 mutual agreement.

16 Section 14. [NEW MATERIAL] RIGHT OF SUBROGATION--
17 CONDITIONS.--An insurer shall be subrogated, to the extent of
18 any personal compensation benefits paid, to all of the rights
19 of its insured with respect to an accident caused, in whole or
20 in part, by the fault of any person who is not a personal
21 compensation chooser.

22 Section 15. [NEW MATERIAL] PAYMENT OF INSURANCE
23 BENEFITS--CAUSES OF ACTION.--

24 A. No offset shall be allowed against personal
25 compensation benefits due based on the value of a cause of

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1 action until after a monetary recovery is made. After
2 recovery is made, a deduction from future benefits may be made
3 in no more than the amount of the net recovery, exclusive of
4 attorney fees, expenses and costs incurred in effecting the
5 recovery.

6 B. If personal compensation benefits have been
7 received, the insurer may require the recipient to repay, out
8 of such recovery, an amount equal to the personal compensation
9 benefits received but not more than the net recovery,
10 exclusive of attorney fees, expenses and costs incurred in
11 effecting the recovery. Any remainder of the net recovery
12 shall be credited periodically against loss as it accrues,
13 until an amount equal to the net recovery has been deducted.
14 The insurer shall have a lien on the recovery equal to net
15 personal compensation benefits received.

16 C. Recovery on a cause of action shall not operate
17 to reduce personal compensation benefit coverage limits, which
18 shall be paid out in full to the extent economic loss exceeds
19 the amount of recovery.

20 Section 16. [NEW MATERIAL] PERSONAL COMPENSATION
21 BENEFITS-- PROMPT PAYMENT. --

22 A. Personal compensation benefits shall be paid as
23 loss accrues. Loss accrues when medical expense, loss of
24 income from work or replacement services loss occurs or when
25 the injured person dies. Notwithstanding any provision of the

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1 New Mexico Insurance Code, personal compensation benefits for
2 accrued losses are overdue if not paid within thirty days
3 after the insurer receives reasonable proof of the fact and
4 the amount of loss; provided that an insurer may accumulate
5 claims for periods not exceeding thirty days, in which case
6 benefits are not overdue if paid within twenty days after the
7 last day of the period of accumulation. If reasonable proof
8 is not supplied as to the entire claim, the amount that is
9 supported by reasonable proof shall be paid promptly as
10 provided in this subsection, and any part of the remainder of
11 the claim that is later supported by reasonable proof shall be
12 paid promptly in the same manner.

13 B. For the purpose of calculating the extent to
14 which personal compensation benefits are overdue, payment
15 shall be treated as made on the date a draft or other valid
16 instrument is placed in the United States mail in a properly
17 addressed postpaid envelope or, if not mailed, on the date of
18 personal delivery to the insured.

19 C. Notwithstanding any provision of the New Mexico
20 Insurance Code, if an insurer is found after an administrative
21 hearing by the superintendent or upon review by a court of
22 competent jurisdiction to be in violation of this section, the
23 exclusive remedy shall be the recovery of the personal
24 compensation benefits and interest at a rate of twelve percent
25 a year beginning from the date the benefits were due, together

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1 with reasonable attorney fees, expenses and costs. In the
2 event of an insurer's willful or wanton failure to comply with
3 this section, the recovery shall be three times the amount of
4 the personal compensation benefits that are overdue, together
5 with attorney fees, expenses and costs.

6 Section 17. [NEW MATERIAL] ASSIGNMENT OR GARNISHMENT--
7 PERSONAL COMPENSATION BENEFITS EXEMPT.--

8 A. Personal compensation benefits are exempt from
9 garnishment, attachment, execution or any other process or
10 claim to the extent that wages or earnings are exempt under
11 any applicable law.

12 B. An agreement for assignment of any right to
13 personal compensation benefits payable in the future shall be
14 unenforceable except to the extent that:

15 (1) benefits are for the cost of medical or
16 other health care services, products or facilities provided or
17 to be provided by the assignee; or

18 (2) benefits for loss of income from work or
19 replacement services loss are assigned for payment of alimony,
20 maintenance or child support.

21 Section 18. [NEW MATERIAL] LIMITATION OF ACTIONS.--

22 A. Subject to the arbitration provisions in
23 Section 24 of the Personal Choice Auto Insurance Act, if no
24 personal compensation benefits have been paid, an action
25 therefor may not be commenced against the insurer later than

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1 two years after the date of the accident causing the injuries.

2 B. Subject to the arbitration provisions in
3 Section 24 of the Personal Choice Auto Insurance Act, if
4 personal compensation benefits have been paid, an action for
5 recovery of further personal compensation benefits may be
6 commenced no later than two years after the date of the last
7 payment of personal compensation benefits; provided that no
8 action for personal compensation benefits shall be commenced
9 against an insurer more than four years after the date of the
10 accident.

11 C. The statute of limitations period for personal
12 injury provided in Section 37-1-8 NMSA 1978 shall, for a cause
13 of action for uncompensated economic loss under the Personal
14 Choice Auto Insurance Act, commence on the day after the
15 insured has incurred economic loss in excess of fifteen
16 thousand dollars (\$15,000) or the insured has exhausted his
17 policy limits, whichever is earlier.

18 Section 19. [NEW MATERIAL] MENTAL AND PHYSICAL
19 EXAMINATIONS. --

20 A. If the mental or physical condition of an
21 injured person is material to any claim that has been or may
22 be made for personal compensation benefits, the injured
23 person, upon request of an insurer, shall submit to reasonable
24 mental or physical examination by a health care provider
25 designated by the insurer at a reasonably convenient time and

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1 location, subject to rules, if any, adopted and promulgated by
2 the superintendent. The cost of any such examination shall be
3 borne by the insurer and shall not be charged against or
4 operate to reduce benefit limits.

5 B. If an insurer has requested in writing that an
6 injured person submit to mental or physical examination
7 pursuant to Subsection A of this section and the person
8 refuses to comply, the insurer may, upon at least thirty days'
9 prior written notice to the insured, suspend all future
10 personal compensation benefits and cease payment of any
11 incurred but unpaid portion of bills for services, which such
12 examination is intended to verify as medically necessary,
13 until the injured person complies with the request.

14 Section 20. [NEW MATERIAL] EMPLOYER AND PROVIDER
15 REQUIREMENTS--MEDICAL EXPENSE REVIEW.--

16 A. Upon request of an insurer, an employer shall
17 furnish a statement of the work record and earnings of an
18 injured person who has filed a claim for personal compensation
19 benefits. The statement shall cover the period specified by
20 the insurer and may include the one-year period before, and
21 the entire period after, the date of the accident.

22 B. To ensure that the treatment and expenses are
23 both reasonable and necessary, insurers may review or obtain a
24 review of treatment and expenses prior to, during and after
25 the course of treatment of an injured person.

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1 C. Every medical or other health care provider
2 providing, before or after an injury upon which a claim for
3 personal compensation benefits is based, any services,
4 products or facilities in relation to that or any other
5 injury, or in relation to a condition claimed to be connected
6 with that or any other injury, shall, upon request of the
7 insurer against whom the claim has been made, furnish the
8 insurer a written report of the history, condition, treatment
9 and dates and costs of treatment of the injured person. The
10 information shall be provided with a declaration that the
11 services, products or facilities rendered were reasonable and
12 necessary with respect to the injury sustained and shall
13 identify which expenses were incurred as a result of the
14 injury. Each medical or other health care provider shall also
15 produce in a timely manner and permit the inspection and
16 copying of its records regarding such history, condition,
17 treatment and the dates and costs thereof. The person
18 providing the declaration required under this section shall
19 attest to it as follows: "I declare that I have read the
20 foregoing and the facts alleged are true, to the best of my
21 knowledge and belief.". The cost of obtaining the information
22 and records required by this subsection shall be borne by the
23 insurer and shall not be charged against or operate to reduce
24 benefit limits.

25 D. No cause of action for violation of the

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1 physician-patient privilege or invasion of the right of
2 privacy shall exist against any medical or other health care
3 provider complying with the provisions of this section, but
4 the insurer is responsible for ensuring the confidentiality of
5 the records in the hands of its officers, employees and
6 agents.

7 E. A dispute regarding the right to the discovery
8 of facts about an injured person by the insurer may be
9 resolved through arbitration as provided in Section 24 of the
10 Personal Choice Auto Insurance Act or in court proceedings.

11 Section 21. [NEW MATERIAL] ASSIGNED CLAIMS PLAN. --

12 A. Insurers, other than self-insurance plans,
13 authorized to provide insurance under the Personal Choice Auto
14 Insurance Act shall organize, participate in and maintain an
15 assigned claims plan to provide benefits equivalent to the
16 minimum personal compensation benefits required by that act to
17 an injured person covered by that act if the person is not a
18 tort chooser or a resident relative of an uninsured motorist
19 as defined in Paragraph (5) of Subsection A of Section 8 of
20 that act and if:

21 (1) personal compensation benefits are
22 unavailable, for a reason other than as specified in Section 8
23 of that act; or

24 (2) personal compensation benefits are
25 unavailable because of the insolvency of an insurer for whose

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1 covered claims the New Mexico property and casualty insurance
2 guaranty association is not responsible.

3 B. The assigned claims plan shall adopt bylaws and
4 rules, and enter into necessary agreements for the operation
5 of the plan and the equitable distribution of costs, as
6 approved by the superintendent.

7 C. Any claim brought through the assigned claims
8 plan shall be assigned to an insurer in accordance with the
9 plan's bylaws and rules. Upon such assignment, the insurer
10 shall have the rights and obligations it would have had if,
11 prior to such assignment, it had issued a personal
12 compensation policy providing the minimum personal
13 compensation coverage required by law.

14 D. Any person accepting personal compensation
15 benefits under the assigned claims plan shall have the rights
16 and obligations the person would have had under a personal
17 compensation policy issued to him providing the minimum
18 personal compensation coverage required by law.

19 E. Benefits available through the assigned claims
20 plan shall be reduced to the extent that benefits covering the
21 same loss are available from other sources, regardless of the
22 nature or number of benefit sources available and regardless
23 of the nature or form of the benefits. The plan coverage
24 shall be deemed secondary to those sources.

25 F. The assigned claims plan and the insurer to

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1 whom the claim is assigned are subrogated, to the extent of
2 personal compensation benefits paid for a loss, to all of the
3 rights of the claimant against any person liable for the loss
4 and against any insurer, its successor in interest or any
5 other person or organization legally obligated to provide
6 personal compensation benefits to the injured person for the
7 loss.

8 Section 22. [NEW MATERIAL] INCENTIVES FOR INSUREDS. --

9 Each insurer shall adopt an actuarially sound program that
10 provides incentives to a personal compensation chooser in the
11 form of increased benefits, reduced premiums or other methods
12 to:

13 A. purchase motor vehicles equipped with automatic
14 seat and harness belts or air bags, but the incentives shall
15 not include a provision for a loss of coverage or benefits for
16 failure to use the devices; and

17 B. have medical expense benefits delivered by a
18 managed care program designated by the insurer, but only the
19 actual cost of the benefits to the insurer shall be charged
20 against the policy limits.

21 Section 23. [NEW MATERIAL] RULES. --The superintendent
22 may adopt and promulgate rules necessary to provide for the
23 effective implementation and administration of the Personal
24 Choice Auto Insurance Act that are consistent with its
25 purposes.

1 Section 24. [NEW MATERIAL] ARBITRATION. --

2 A. Any dispute with respect to personal
3 compensation benefits between an insurer and an injured
4 person, or the dependents or estate of such person, may be
5 submitted to arbitration pursuant to the provisions of this
6 section if the insurer and the person agree. Only the dispute
7 that the parties have agreed to arbitrate may be addressed by
8 the arbitration.

9 B. Upon agreement for arbitration, the parties may
10 agree on a single arbitrator or, if no such agreement can be
11 reached, each party shall select a competent arbitrator, and
12 the two arbitrators so named shall select a third arbitrator.
13 If unable to agree on the third arbitrator within thirty days,
14 either party may request a judge of the district court in the
15 county in which the arbitration is pending to select the third
16 arbitrator. The written decision of the arbitrator, or any
17 two arbitrators if a panel of three is used, shall be binding
18 on each party.

19 C. The cost of any arbitrator or any expert
20 witness selected by one party shall be paid by that party.
21 The cost of any arbitrator agreed upon by the parties or their
22 arbitrators and other expenses of arbitration shall be shared
23 equally by both parties.

24 D. The arbitration shall take place in the county
25 in which the insured resides unless the parties agree to

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1 another location. The Rules of Civil Procedure and Rules of
2 Evidence for the District Courts shall apply.

3 Section 25. [NEW MATERIAL] OUT-OF-STATE VEHICLES. --

4 A. Each insurer doing business in New Mexico shall
5 file with the superintendent, as a condition of its continued
6 transaction of business, a form approved by the superintendent
7 declaring that any contract of primary motor vehicle
8 insurance, wherever issued, covering the operation,
9 maintenance or use of a motor vehicle shall be deemed, while
10 the motor vehicle is in New Mexico, to provide at least the
11 minimum benefits required for a personal compensation policy
12 by the Personal Choice Auto Insurance Act. The insured under
13 any such policy is deemed to have elected coverage under a
14 personal compensation policy, and to have accepted the
15 limitations on tort rights and liabilities of the Personal
16 Choice Auto Insurance Act.

17 B. The provisions of this section do not apply to
18 any named insured who, prior to a motor vehicle accident
19 within New Mexico, has become a tort chooser pursuant to
20 Section 5 of the Personal Choice Auto Insurance Act. With
21 respect to such a tort chooser, the bodily injury and property
22 damage liability limits of the policy shall be operative,
23 subject to conformance with the Mandatory Financial
24 Responsibility Act.

25 Section 26. Section 59A-7-7 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 113) is amended to read:

2 "59A-7-7. "VEHICLE" INSURANCE DEFINED. -- "Vehicle"

3 insurance is insurance covering:

4 A. physical damage. Insurance against loss of or
5 damage to any land vehicle or aircraft or any draft or riding
6 animal resulting from or incident to ownership, maintenance or
7 use of any such vehicle, aircraft or animal;

8 B. public liability and property damage.
9 Insurance against any hazard or cause, and against any loss,
10 liability or expense resulting from or incident to ownership,
11 maintenance or use of any such vehicle, aircraft or animal;

12 C. cargo. Insurance against loss of or damage to
13 property contained in a vehicle or being loaded or unloaded
14 therein or therefrom or incident to the ownership, maintenance
15 or use of any such vehicle, aircraft or animal; [and]

16 D. medical payments. Insurance for payment on
17 behalf of the injured party or for reimbursement of the
18 insured for payment, irrespective of legal liability of the
19 insured, of medical, hospital, surgical and disability
20 benefits, to persons injured and funeral and death benefits to
21 dependents, beneficiaries or personal representatives of
22 persons killed as the result of an accident, resulting from or
23 incident to ownership, maintenance or use of any such vehicle,
24 aircraft or animal. Such coverage shall not be deemed to be
25 "health" insurance for purposes of the Insurance Code; and

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E. the risks and providing the benefits described in the Personal Choice Auto Insurance Act. "

Section 27. A new Section 59A-7-7.1 NMSA 1978 is enacted to read:

"59A-7-7.1. [NEW MATERIAL] "MOTOR VEHICLE INSURANCE POLICY" DEFINED. -- "Motor vehicle insurance policy" means a policy of vehicle insurance that covers self-propelled vehicles of a kind required to be registered under New Mexico law for use on public streets and highways and:

A. shall include either:

(1) a motor vehicle bodily injury and property damage liability policy in compliance with the Mandatory Financial Responsibility Act, together with uninsured motorist coverage, subject to the provisions of Section 66-5-301 NMSA 1978 permitting the insured to reject the coverage; or

(2) a personal compensation policy as defined in the Personal Choice Auto Insurance Act; and

B. may include:

(1) physical damage coverage;
(2) medical payments coverage; and
(3) other coverages that the insured and the insurer agree to include within the policy. "

Section 28. Section 59A-32-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 521) is amended to read:

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1 "59A-32-3. PURPOSE OF ASSIGNED RISK PLAN. -- The purpose
2 of the assigned risk plan is to provide for the equitable
3 distribution and apportionment among insurers authorized to
4 transact in this state the business of [~~automobile and~~
5 personal compensation, motor vehicle bodily injury, property
6 damage liability and physical damage insurance, of insurance
7 afforded applicants who are in good faith entitled to, but who
8 are unable to procure, such insurance through ordinary
9 methods. "

10 Section 29. Section 59A-32-5 NMSA 1978 (being Laws 1984,
11 Chapter 127, Section 523) is amended to read:

12 "59A-32-5. REQUIREMENTS OF ASSIGNED RISK PLANS. -- [~~Any~~
13 ~~such~~] An agreement or plan for the assignment of risks
14 involving [~~automobile and~~] personal compensation, motor
15 vehicle bodily injury, [~~and~~] property damage liability and
16 physical damage insurance shall include provision for:

17 A. reasonable rules governing the equitable
18 distribution of risks by direct insurance, reinsurance or
19 otherwise, and by the assignment of risks to insurers
20 participating in the plan;

21 B. rates and reasonable rate modifications, which
22 shall be applicable to such risks and which shall not be
23 excessive, inadequate or unfairly discriminatory;

24 C. the coverage limits [~~of liability which~~] that
25 any insurer to [~~whom~~] which a risk is assigned shall be

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1 required to assume; and

2 D. a method whereby applicants for insurance,
3 persons insured and insurers under the plan may have a hearing
4 on grievances and the right to appeal from the decision on
5 [~~any such~~] a grievance to the superintendent. "

6 Section 30. Section 59A-32-6 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 524) is amended to read:

8 "59A-32-6. REVIEW OF PROPOSED ASSIGNED RISK PLANS. --
9 Every [~~such~~] plan for the assignment of risks involving
10 [~~automobile and~~] personal compensation, motor vehicle bodily
11 injury, [~~and~~] property damage liability and physical damage
12 insurance shall be filed in writing with the superintendent.
13 The superintendent shall review the plan as soon as reasonably
14 possible after filing, to determine whether or not it meets
15 the requirements of Section [~~523 of this article~~] 59A-32-5
16 NMSA 1978. Each plan shall be on file with the superintendent
17 for a waiting period of thirty [~~(30)~~] days before it becomes
18 effective, unless sooner approved in writing. Unless
19 disapproved in writing by the superintendent within the thirty
20 [~~(30)~~] day waiting period, a plan shall be deemed approved and
21 shall become effective upon the expiration of that period. "

22 Section 31. Section 59A-32-8 NMSA 1978 (being Laws 1984,
23 Chapter 127, Section 526) is amended to read:

24 "59A-32-8. FAILURE TO FILE PLAN--ASSIGNED RISK PLAN
25 PRESCRIBED. --If no plan [~~which~~] that meets the requirements of

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1 Section [~~523 of this article above~~] 59A-32-5 NMSA 1978 has
2 been filed with the superintendent within ninety [~~(90)~~] days
3 after [~~June 30, 1959~~] the effective date of the Personal
4 Choice Auto Insurance Act, or within the period stated in
5 [~~any~~] an order [~~which~~] that disapproves an existing plan, the
6 superintendent may formulate and prescribe a plan [~~which~~] that
7 does meet [~~such~~] those requirements, after hearing or
8 consultation with insurers authorized to transact in this
9 state the business of [~~automobile and~~] personal compensation,
10 motor vehicle bodily injury, [~~and~~] property damage liability
11 and physical damage insurance. When [~~any~~] a plan [~~or plans~~]
12 or amendment [~~thereto~~] to it has [~~or have~~] been approved or
13 prescribed, no insurer to which [~~such~~] the plan is applicable
14 shall thereafter issue [~~any~~] a policy of [~~such~~] insurance, or
15 undertake to transact [~~such~~] business in this state, unless
16 the insurer participates in [~~such~~] the plan. "

17 Section 32. Section 66-5-208 NMSA 1978 (being Laws 1978,
18 Chapter 35, Section 282, as amended) is amended to read:

19 "66-5-208. EVIDENCE OF FINANCIAL RESPONSIBILITY--AMOUNTS
20 AND CONDITIONS. -- [~~"Evidence of financial responsibility"~~] As
21 used in the Mandatory Financial Responsibility Act, "evidence
22 of financial responsibility" means:

23 A. evidence of the ability to respond in damages
24 for liability, on account of accidents occurring subsequent to
25 the effective date of the evidence, arising out of the

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1 ownership, maintenance or use of a vehicle of a type subject
2 to registration under the laws of New Mexico, in the following
3 amounts:

4 [A. ~~twenty five thousand dollars (\$25,000)~~]
5 (1) fifteen thousand dollars (\$15,000) because of bodily
6 injury to or death of one person in [~~any one~~] a single
7 accident;

8 [B.] (2) subject to [~~this~~] the limit for one
9 person, [~~fifty thousand dollars (\$50,000)~~] thirty thousand
10 dollars (\$30,000) because of bodily injury to or death of two
11 or more persons in [~~any one~~] a single accident;

12 [C.] (3) ten thousand dollars (\$10,000)
13 because of injury to or destruction of property of others in
14 [~~any one~~] a single accident; and

15 [D.] (4) if evidence is in the form of a
16 surety bond or a cash deposit, the total amount shall be
17 [~~sixty thousand dollars (\$60,000)~~] forty thousand dollars
18 (\$40,000); or

19 B. evidence of a valid personal compensation
20 policy as specified in the Personal Choice Auto Insurance
21 Act. "

22 Section 33. Section 66-5-209 NMSA 1978 (being Laws 1978,
23 Chapter 35, Section 283, as amended) is amended to read:

24 "66-5-209. MEANING OF "JUDGMENT". -- ["~~Judgment~~"] As used
25 in the Mandatory Financial Responsibility Act, "judgment"

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[bracketed material] = delete

1 means any judgment [~~which~~] that becomes final by expiration
2 without appeal of the time within which an appeal might have
3 been perfected or by final affirmation on appeal rendered by a
4 court of competent jurisdiction of any state or of the United
5 States, upon a cause of action, as limited by the Personal
6 Choice Auto Insurance Act, arising out of the ownership,
7 maintenance or use of any motor vehicle of a type subject to
8 registration [~~under~~] pursuant to the laws of New Mexico, for
9 damages, including damages for care and loss of services,
10 because of bodily injury to or death of any person or for
11 damages because of injury to or destruction of property,
12 including [~~the~~] its loss of use, [~~thereof~~] or upon a cause of
13 action on an agreement of settlement for such damages.
14 "Judgment" does not include any amount recoverable as
15 uncompensated economic loss pursuant to the Personal Choice
16 Auto Insurance Act. "

17 Section 34. Section 66-5-215 NMSA 1978 (being Laws 1978,
18 Chapter 35, Section 298, as amended) is amended to read:

19 "66-5-215. PAYMENTS SUFFICIENT TO SATISFY REQUIREMENTS. --

20 A. Judgments herein referred to shall, for the
21 purpose of the Mandatory Financial Responsibility Act only, be
22 deemed satisfied when:

23 (1) [~~twenty-five thousand dollars (\$25,000)-~~]
24 fifteen thousand dollars (\$15,000) has been credited upon any
25 judgment or judgments rendered in excess of that amount

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1 because of bodily injury to or death of one person as the
2 result of any one accident;

3 (2) subject to the limit of [~~twenty-five~~
4 ~~thousand dollars (\$25,000)~~] fifteen thousand dollars (\$15,000)
5 because of bodily injury to or death of one person, the sum of
6 [~~fifty thousand dollars (\$50,000)~~] thirty thousand dollars
7 (\$30,000) has been credited upon any judgment [~~or judgments~~]
8 rendered in excess of that amount because of bodily injury to
9 or death of two or more persons as the result of any one
10 accident; or

11 (3) ten thousand dollars (\$10,000) has been
12 credited upon any judgment [~~or judgments~~] rendered in excess
13 of that amount because of injury to or destruction of property
14 of others as a result of any one accident.

15 B. However, payments made in settlements of any
16 claims because of bodily injury, death or property damage
17 arising from the accident shall be credited in reduction of
18 the amounts provided for in this section. "

19 Section 35. Section 66-5-224 NMSA 1978 (being Laws 1978,
20 Chapter 35, Section 309, as amended) is amended to read:

21 "66-5-224. ACT NOT TO AFFECT OTHER POLICIES. --

22 A. The Mandatory Financial Responsibility Act does
23 not apply to or affect policies of motor vehicle insurance
24 [~~against liability which~~] that may now or hereafter be
25 required by any other law of New Mexico, except the Personal

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1 Choice Auto Insurance Act, and such policies, if they contain
2 an agreement or are endorsed to conform with the requirements
3 of the Mandatory Financial Responsibility Act, may be
4 considered as evidence of financial responsibility [~~under~~]
5 pursuant to that act.

6 B. The Mandatory Financial Responsibility Act does
7 not apply to or affect policies insuring solely the insured
8 named in the policy against liability resulting from the
9 maintenance or use by persons in the insured's employ or on
10 his behalf of motor vehicles not owned by the insured. "

11 Section 36. Section 66-5-226 NMSA 1978 (being Laws 1955,
12 Chapter 182, Section 330, as amended) is amended to read:

13 "66-5-226. CASH DEPOSIT AS EVIDENCE. -- Evidence of
14 financial responsibility may be demonstrated by the
15 certificate of the state treasurer that the person named in
16 the certificate has deposited with him [~~sixty thousand dollars~~
17 ~~(\$60,000)~~] forty thousand dollars (\$40,000) in cash. "

18 Section 37. Section 66-5-301 NMSA 1978 (being Laws 1978,
19 Chapter 35, Section 325, as amended) is amended to read:

20 "66-5-301. INSURANCE AGAINST UNINSURED AND UNKNOWN
21 MOTORISTS--REJECTION OF COVERAGE BY THE INSURED. --

22 A. No motor vehicle [~~or automobile~~] bodily injury
23 and property damage liability policy [~~insuring against loss~~
24 ~~resulting from liability imposed by law for bodily injury or~~
25 ~~death suffered by any person and for injury to or destruction~~

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1 ~~of property of others arising out of the ownership,~~
2 ~~maintenance or use of a motor vehicle]~~ shall be delivered or
3 issued for delivery in New Mexico with respect to any motor
4 vehicle registered or principally garaged in New Mexico unless
5 coverage is provided therein or supplemental thereto in
6 minimum limits for bodily injury or death and for injury to or
7 destruction of property as set forth in Section 66-5-215 NMSA
8 1978 and such higher limits as may be desired by the insured,
9 but up to the limits of liability specified in bodily injury
10 and property damage liability provisions of the insured's
11 policy, for the protection of persons insured thereunder who
12 are legally entitled to recover damages from owners or
13 operators of uninsured motor vehicles because of bodily
14 injury, sickness or disease, including death, and for injury
15 to or destruction of property resulting therefrom according to
16 the rules and regulations promulgated by, and under provisions
17 filed with and approved by, the superintendent of insurance.

18 B. The uninsured motorist coverage described in
19 Subsection A of this section shall include underinsured
20 motorist coverage for persons protected by an insured's
21 policy. For the purposes of this subsection, "underinsured
22 motorist" means an operator of a motor vehicle with respect to
23 the ownership, maintenance or use of which the sum of the
24 limits of liability under all bodily injury liability
25 insurance applicable at the time of the accident is less than

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1 the limits of liability under the insured's uninsured motorist
2 coverage. [~~No motor vehicle or automobile liability policy~~
3 ~~sold in New Mexico shall be required to include underinsured~~
4 ~~motorist coverage until January 1, 1980.~~] A personal
5 compensation insured under the Personal Choice Auto Insurance
6 Act is not an underinsured motorist except to the extent a
7 claim is made for uncompensated economic loss against the
8 motorist, as provided in that act, that exceeds the coverage
9 limit under the personal compensation policy.

10 C. Unless a named insured makes an express
11 election to stack uninsured motorist coverage limits for two
12 or more motor vehicles by adding such limits together, the
13 limits shall not be stacked. An insurer shall notify its
14 policyholders in writing that they may elect to stack
15 uninsured motorist coverage limits.

16 [~~C.~~] D. The uninsured motorist coverage shall
17 [~~provide an exclusion~~] exclude coverage of not more than the
18 first [two hundred fifty dollars (\$250)] five hundred dollars
19 (\$500) of loss resulting from injury to or destruction of
20 property of the insured in any one accident and may exclude
21 coverage of punitive or exemplary damages. The named insured
22 shall have the right to reject uninsured motorist coverage
23 [as] described in [~~Subsections A and B of~~] this section
24 [~~provided that~~] but, unless the named insured requests [such]
25 that coverage in writing, [such coverage] it need not be

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1 provided in or supplemental to a renewal policy where the
2 named insured has rejected the coverage in connection with a
3 policy previously issued to him by the same insurer.

4 E. Uninsured motorist coverage for injury to or
5 destruction of property extends only to the vehicle described
6 in the policy and to property not otherwise insured carried in
7 or upon the vehicle. "

8 Section 38. TEMPORARY PROVISION--TRANSITION OF RENEWAL
9 POLICIES.--Each motor vehicle insurance policy in effect on
10 the effective date of the Personal Choice Auto Insurance Act
11 shall become subject to the provisions of that act on its
12 first succeeding renewal date. At least thirty days before
13 the policy renewal date, the motor vehicle insurer shall
14 notify the policyholder of the new limitations on tort rights
15 and liabilities and shall provide information on obtaining the
16 appropriate form to reject the limitations. At that time, the
17 motor vehicle insurer shall also afford the policyholder the
18 opportunity to purchase the optional coverages specified in
19 Section 4 of the Personal Choice Auto Insurance Act. If the
20 policyholder does not request any optional coverage prior to
21 the renewal date of the policy and does not inform the insurer
22 that he is a tort chooser, the policy shall be reissued as a
23 personal compensation policy with personal compensation
24 benefits equal to the medical payments coverage previously
25 selected by the insured, but in no event less than fifteen

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1 thousand dollars (\$15,000). If the insurer does not offer
2 personal compensation benefits in an amount equal to the
3 insured's previous medical payments limit, then the insurer
4 shall provide the available limit that is nearest, but not
5 less than, the previous medical payments limit. All other
6 coverages previously purchased by a named insured shall remain
7 in effect; provided that motor vehicle insurers may delete any
8 coverage that would substantially duplicate personal
9 compensation benefits, including uninsured motorist coverage
10 and disability coverage. If the policyholder requests any
11 optional coverage, the requested coverage shall be effective
12 on the reissue date of the policy if the request is received
13 by the motor vehicle insurer prior to the renewal date of the
14 policy. If received on or after the reissue date, the
15 requested coverage shall be effective at 12:01 a.m. on the day
16 after the request is received.

17 Section 39. TEMPORARY PROVISION-- COST SAVINGS TO
18 CONSUMERS. --

19 A. Each insurer that writes motor vehicle
20 insurance policies shall file policy forms and rates for
21 personal compensation policies and motor vehicle bodily injury
22 and property damage liability policies, including tort
23 coverage, with the superintendent of insurance no later than
24 sixty days before the effective date of the provisions of the
25 Personal Choice Auto Insurance Act, for review and approval

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1 pursuant to Chapter 59A, Article 17 NMSA 1978.

2 B. Each insurer's statewide average premium for a
3 personal compensation policy with minimum required benefits
4 during the first year following the effective date of the
5 Personal Choice Auto Insurance Act shall be at least thirty
6 percent less than the insurer's statewide average premium for
7 calendar year 1997 for mandatory insurance coverage, unless
8 the insurer first demonstrates at a rate hearing that such a
9 decrease will result in inadequate rates. For the purposes of
10 this subsection, "mandatory insurance coverage" means the
11 minimum limits for bodily injury and property damage liability
12 set forth in Section 66-5-215 NMSA 1978 immediately prior to
13 the effective date of this act and the minimum uninsured and
14 underinsured motorist coverage set forth in Section 66-5-301
15 NMSA 1978.

16 C. Prior to the effective date of the provisions
17 of the Personal Choice Auto Insurance Act, the superintendent
18 of insurance may adopt and promulgate rules, approve proposed
19 policy forms and review and approve insurance rates for
20 coverages to be made available pursuant to that act.

21 Section 40. SEVERABILITY. --

22 A. Except as provided otherwise in Subsection B of
23 this section, if any provision of the Personal Choice Auto
24 Insurance Act or the application thereof to any person,
25 organization or circumstance is held to be unconstitutional or

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1 otherwise invalid, the remainder of that act and the
2 application of such provision to other persons or
3 circumstances shall not be affected.

4 B. If Section 12 of the Personal Choice Auto
5 Insurance Act is found to be unconstitutional or invalid, in
6 whole or in part, it is to be conclusively presumed that the
7 legislature would not have enacted the remainder of this act
8 without those limitations and that act shall not be severable
9 and shall be invalid.

10 Section 41. EFFECTIVE DATE. --The effective date of the
11 provisions of:

12 A. Sections 1 through 38 of this act is July 1,
13 1999; and

14 B. Sections 39 and 40 of this act is July 1, 1998.